



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

CRS

Docket No: 4768-00

30 October 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) MILPERSMAN

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Navy, filed enclosure (1) with this Board requesting in effect, that he be allowed to wear the Enlisted Submarine Breast Insignia.

2. The Board, consisting of Messrs. Pfeiffer, Pauling, and Mackey, reviewed Petitioner's allegations of error and injustice on 12 October 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 13 May 1994 after more than six years of prior active service. During this period of prior service, he qualified in submarines. He did not receive any disciplinary action during his second enlistment.

d. On 30 June 1999 Petitioner was disqualified for submarine duty and his enlisted submarine designator (SS) was removed due to nuclear NEC removal for demonstrated unreliability based on a psychiatric diagnosis of suicidal and homicidal ideations requiring continuing treatment with psychotropic medications.

e. On 1 July 1999 he was placed on the Temporary Disability Retired List.

f. An advisory opinion from the Navy Personnel Command opined that Petitioner was disqualified in submarines and not allowed to wear the Enlisted Submarine Breast Insignia. The opinion stated that PERS-403 is the final authority for the entitlement to wear the insignia and recommended denial of Petitioner's request.

g. Article 1220-040 of reference (b) states that the submarine designator may be removed due to physical disqualification or for "all other reasons." Emotional disability is one of those other reasons. The article goes on to indicate that an individual whose designator is removed due to physical disqualification may be permitted to continue to wear the breast insignia. That privilege is not, however, given to an individual whose insignia is removed for other reasons.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that Petitioner's mental condition is not within his control and believes he should not be penalized for his mental illness. Consequently, the Board concludes that since Petitioner was disqualified because of a mental problem, he should be allowed to wear the Enlisted Submarine Breast Insignia even though he has been disqualified for submarines and has had his submarine designator removed.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he is entitled to wear the Enlisted Submarine Breast Insignia.

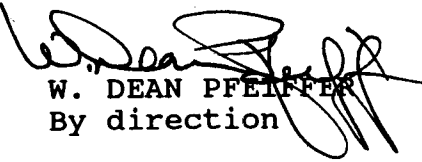
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

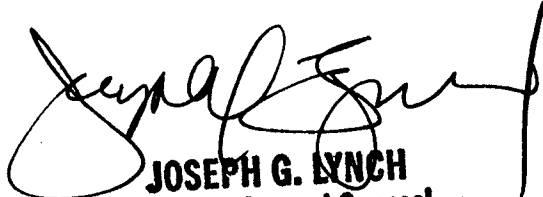

ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
By direction

Reviewed and approved:

NOV 29 2000


JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)